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HOMESTEAD AND EXEMPTION LAWS OF THE SOUTHERN STATES.

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II. The Constitutionality, Construction, and Effect, of Homestead and Exemption Laws.

The first question for our consideration is, Are the Homestead and Exemption Laws of the Southern States unconstitutional? Do they impair the obligation of contracts?

The Constitution of the United States declares that "no state shall pass any law impairing the obligation of contracts."

"In discussing this question," says Chief Justice Marshall, our first inquiry is, into the meaning of words in common sense. What is the obligation of a contract? and what will impair it? * * * A contract is an agreement in which a party undertakes to do, or not to do, a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. * * * Any law which releases a part of this obligation, must, in the literal sense of the word impair it. Much more must a law impair it, which makes it totally invalid and entirely discharges it:" *Sturges* v. *Crowninshield*, 4 Wheat. 197.

What does the term "obligation" in this clause, include? The importance of the question rests mainly on the distinction which has been drawn between the laws of a state which were in force at the time when the contract was made, and those which are

subsequently enacted. The latter may certainly impair this "obligation," while the former, as it is contended, certainly cannot, because all existing laws enter into contracts made under them and define and determine that contract. Those who hold to the distinction maintain, that the "obligation" of the contract consists in the municipal law existing at the time the contract is made, 4 Wheat. 122, *Ogden* v. *Saunders*, 12 Wheat. 250, 259, 302, 318, or perhaps in a combination of the moral, natural, and municipal law, 12 Wheat. 281, while those who deny the distinction, insist that the "obligation" consists in the universal law of contracts, which is unaffected by municipal law, and is not itself conferred or created by positive law, but derived from the agreement of the parties: Pars. on Cont., vol 3, p. 555.

"The obligation of a contract is a legal, not a mere moral obligation; it is the law which binds a party to perform his undertaking. The obligation does not inhere or subsist in the contract itself, proprio vigore, but in the law applicable to the contract:" 1 Bouv. Law Dic. 652, and authorities cited.

When parties enter into a contract, which the plaintiff seeks to enforce, what is the legal obligation of the defendant? His legal obligation is to perform his contract, as the law of the land, applicable to that contract, requires him to perform it, at the time it was made. That is the extent of his legal obligation to the plaintiff, and just to that extent the plaintiff has the legal right to have it performed, in order to maintain the integrity of the legal obligation of the defendant's contract. If there had been no existing law applicable to the contract, prescribed by the supreme power of the state, at the time it was made, creating and defining the defendant's obligation to perform it, then he would have incurred no other than a mere moral obligation, over which human tribunals have no jurisdiction. It, therefore, necessarily follows, that the existing law applicable to the contract, prescribed by the supreme power of the state, at the time the contract was made, creates and defines the defendant's legal obligation to perform it, in accordance with its terms and stipulations. "A perfect right is that which is accompanied by the right of compelling those who refuse to fulfil the correspondent obligation. A perfect obligation is that which gives to the opposite party the right of compulsion:" Vattel 62. The defendant's obligation to perform his contract, under the then existing law, was perfect, and the plain-

tiff's right to have that obligation performed as prescribed by that existing law, was also a perfect right: *Aycock* v. *Martin*, 37 Ga. 128.

What is the rule as declared by the Supreme Court of the United States, in two of the latest decisions made by that court, upon a careful review of all the prior adjudications made by that tribunal, in regard to what constitutes the obligation of a contract?

In the case of *McCracken* v. *Hayward*, 2 How. 612, the court says: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it was made; these are necessarily referred to in all contracts, and forming a part of them, as the measure of the obligation to perform them by the one party, and the right acquired by the other, hence any law, which in its operation amounts to a denial, or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." Again the court says: "The obligation of the contract between the parties in this case, was to perform the promises and undertakings contained therein; the right of the plaintiff was to damages for the breach thereof, to bring suit and obtain a judgment, to take out and prosecute an execution against the defendant till the judgment was satisfied, pursuant to the existing laws of Illinois. These laws, giving these rights, were as perfectly binding on the defendant, and as much a part of the contract, as if they had been set forth in its stipulations in the very words of the law relating to judgments and executions."

In the case of *Van Hoffman* v. *The City of Quincy*, 4 Wallace 550, decided in 1866, the court, after reviewing and commenting upon the previous adjudications made upon this question in the Supreme Court of the United States, says: "It is also settled, that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into, and form a part of it, as if they were expressly referred to, or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge, and enforcement." Speaking of the distinction between the obligation of the contract and the remedy, the court says: "The doctrines upon that subject, by the latest adjudications of this court, render the distinction one rather of form than substance. A right without

a remedy is as if it were not. For every beneficial purpose, it may be said not to exist. A different result would leave nothing of the contract but an abstract right of no practical value, and render the protection of the Constitution a shadow and a delusion. Nothing can be more material to the obligation of a contract than the means of enforcement. Without the remedy, the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those social duties which depend, for their fulfilment, wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion:" *Van Hoffman* v. *The City of Quincy*, 4 Wall. 554. In *Green* v. *Biddle*, 8 Wheat. 1, the Supreme Court of the United States, thus states the rule in regard to laws impairing the obligation of contracts: "The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing, or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute, or apparently immaterial in their effect upon the contract of the parties, impairs its obligation." See also *The Justices of Morgan Co.* v. *Sparks et. al.*, 6 Ga. 439; *Winter* v. *Jones*, 10 Ga. 195.

In 1843 in the case of *Bronson* v. *Kinzie*, 1 How. 316, 317, Chief Justice TANEY (concurred with by the whole court, except Justice MCLEAN), says: "Whatever belongs merely to the remedy, may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution. * * * It is difficult, perhaps, to draw a line that would be applicable in all cases, between legitimate alterations of the remedy, and provisions which, in form of remedy, impair the right. But it is manifest that the obligation of the contract and the right of the party under it, may, in effect, be destroyed by denying a remedy altogether, or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say there was

any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or encumbered it with conditions that rendered it useless or impracticable to pursue it."

In 1844, in the case of *McCracken* v. *Hayward*, 2 Howard 611, this decision was reviewed and confirmed, Justice BALDWIN delivering the opinion of the court. And in 1866, in the case of *Van Hoffman* v. *The City of Quincy*, 4 Wall. 554, the whole court, after thoroughly reviewing all the previous decisions delivered by said court, and affirming them, says: "If these doctrines were *res integræ* the consistency and soundness of the reasoning which maintains a distinction between the contract and the remedy—or, to speak more accurately, between the remedy and the other parts of the contract—might perhaps well be doubted. But they rest in this court upon a foundation of authority too firm to be shaken; and they are supported by such an array of judicial names that it is hard for the mind not to feel constrained to believe they are correct. The doctrines upon the subject established by the latest adjudications of this court render the distinction one rather of form than substance."

From a careful review of every case before the court, since the case of *Bronson* v. *Kinzie*, involving the interpretation of the clause of the Constitution which we have been considering, it will be observed that they all conform to the opinion of Chief Justice TANEY.

Mr. Sedgwick, in his recent Commentary on Statutory and Constitutional Law 652, 653, after citing and reviewing all the cases in the Supreme Court of the United States, wherein this prohibition of the Constitution is drawn in question, says: "I am free to confess my entire inability to distinguish between the obligation and the remedy of a contract. Obligation, I suppose, means binding force, the force or constraint which binds the party to perform his agreement. What, then, is in legal acceptation, the binding force of a contract? It certainly is not the mere naked promise. It is not the moral duty. It is not honor, or fashion, that binds the contracting party to keep his engagement. What is it then but the remedy—the coercive remedy—which the law gives against the person or property of the defaulting party? It seems to me, that looking at a contract legally and practically

as an instrument by which rights of property are created, and in which they repose, obligation and remedy are strictly convertible terms. Take away the whole remedy and it is admitted the contract is gone. How, then, if a material part of the remedy be taken away, can it be said that the obligation is not impaired? A confusion would seem to have arisen from not sufficiently taking into consideration the full sense of the term impaired. It is said that the remedy forms no part of the contract, and that the creditor makes his bargain, knowing that he is at the mercy of future legislation; but as I understand it, all the cases distinguishing between the operation of state insolvent laws and state stop laws, passed before the making of the contract, and those made after, proceed on the very ground that the legislation in force at the time of the contract enters into and forms part of it. It is said again, that in all countries, and at all times, the remedy has been under the control of the sovereign authority. This is merely begging the question, or rather arguing from false analogies. The very question with us, is whether, under our system, we have not declared a different rule. No one seeks to deny that the remedy should be to a certain extent under legislative control. Tribunals may be changed, procedure altered; these modifications do in no wise impair the remedy or prejudice the holder of a contract. But it seems to me the only logical rule to hold, that any legislation which materially diminishes the remedy given by law to the creditor at the time his contract is made, just so far impairs the obligation of the contract."[1]

From these decisions we can safely state the following principles of law:—

I. That the obligation of a contract is a legal not a mere moral obligation; it is the law which exists at the time the contract is made, which binds a party to perform his undertaking. That the obligation does not inhere in the contract itself *proprio vigore*, but in the law applicable to the contract; and that the idea of validity and remedy are inseparable and both are part of the obligation which is guaranteed by the Constitution of the United States against invasion.

[1] The decision in the case of *Van Hoffman* v. *The City of Quincy*, 4 Wall. 535, was not rendered at the time Mr. Sedgwick wrote his Commentary, but the conclusion which he arrives at, is fully sustained by the Supreme Court in that decision.

II. That any law passed after the making of a contract which impairs the obligation of said contract, whether it is done by acting on the remedy or directly on the contract, is a law impairing the obligation of contracts, in the meaning of the Constitution of the United States, which declares that "no State shall pass any law impairing the obligation of contracts."

III. That the Supreme Court of the United States being the recognised interpreter of the Federal Constitution, its decisions, upon the question under consideration, are binding authority upon all the State Courts.

Let us now review some of the decisions of the Supreme Courts of the Southern States, delivered upon their Homestead and Exemption Laws, and see if they have recognised the binding authority of the Supreme Court of the United States.

In the case of *Hardeman* v. *Donner*, 39 Ga. 425 (WARNER, J., dissenting; see also *Pullian* v. *Sewell*, to appear in 40 Ga. Repts.), decided June Term 1869, the Supreme Court of Georgia held "that the homestead and exemption laws were retroactive and applied to judgments, executions and decrees founded on debts contracted before that time." The facts of the case were these: James Donner applied to the Ordinary for exemption of personalty worth $1000 and of his homestead under the Constitution of 1868. 930 acres of land certified by the surveyor to be worth not more than $2000 in gold, and his personalty, were allowed him by the Ordinary. Before the allowance was made Hardeman filed his objections to it upon the ground that he had a judgment against Donner which was obtained before the adoption of the Constitution of 1868; that execution had been issued and levied on said land before Donner filed his application, and that Donner had not sufficient property besides said land to satisfy said judgment. The case was taken to the Superior Court on appeal, and the judgment of the Ordinary affirmed. The refusal to dismiss Donner's application was assigned as error and taken to the Supreme Court where the judgment of the court below was affirmed and the homestead and exemption approved and allowed, the court deciding that the homestead and exemption laws of 1868 were retroactive but that they did not fall within the prohibition of the Constitution of the United States (Art. 10, sec. 1): and that a judgment was a lien created by law and not by the contract of the parties, and that the Constitution of the United States only prohibited a state from

divesting a vested right created by the contract of parties. Is not this decision in direct conflict with the decisions of the Supreme Court of the United States? Does it not release Donner's property from the payment of Hardeman's judgment, which was obtained before the Act was passed under which Donner seeks his homestead?

"The release," says Chief Justice MARSHALL, "of a man's effects and property from the payment of what he stipulated, would be a violation of the obligation of the contract; the law subjects the property at all times to pay the debt, and the withdrawal of it from that purpose, is a clear violation of the obligation of the contract. The property constitutes the means, the sole means, of satisfying his debts; take that away and a mere naked promise is left the creditor, and the obligation is gone."

"One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or cause, but of encroaching, in any respect, on its obligation—dispensing with any part of its force:" *Van Hoffman* v. *The City of Quincy*, 4 Wall. 553. Would any man give as much for Hardeman's judgment against Donner, and the defendant's obligation to perform it, now since the passage of the Act of 1868, allowing the defendant to exempt $2000 worth of realty and $1000 of personalty when the law allows him, as in the case before us, the privilege of exempting all of his property? If not, why not? Is it not because the contract has been diminished by the law encroaching on its obligation—dispensing with a part of its force? Will it be answered that the state has the power over the remedy, and that the remedy only is altered? We reply in the words of Chief Justice TANEY: "Whatever belongs merely to the remedy, may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution:" *Bronson* v. *Kinzie*, 1 Howard 316; see also *Sturges* v. *Crowninshield*, 4 Wheat. 191; *Green* v. *Biddle*, 8 Wheat. 1; *McCracken* v. *Hayward*, 2 Howard 608; *Howard* v. *Bugbee*, 24 Id. 461.

In *Chambliss* v. *Phelps*, 39 Ga. 386 (WARNER, J., dissenting), the Court decided, "that the homestead was not subject to an ex-

ecution which was issued upon a judgment to foreclose a mortgage before the adoption of the Constitution." The facts of the case were these: Chambliss applied to the Court for the exemption from his debts of certain personalty and certain land as his homestead. The county surveyor laid off certain 501 acres of land as said homestead, and certified that they were not worth over $2000 in specie. Phelps objected to the court approving said exemption, because he was the owner of a mortgage for $2000 made by said Chambliss on said land to said Phelps on the 8th of November, 1858. The rule absolute foreclosing said mortgage was taken in August 1867. The exemption laws were not passed until 1868.

This decision is in direct opposition to several decisions pronounced by the Supreme Court of the United States. The first decision was *Bronson* v. *Kinzie*, 1 Howard 311; affirmed by *McCracken* v. *Hayward*, 2 Id. 612; *Grantley* v. *Ewing*, 3 Id. 716; *Howard* v. *Bugbee*, 24 Id. 461; in which the court says: "A mortgage contained a power to the creditor to sell on breach of the condition, and thereby pay the debt; this power was valid under the laws of the state when given. A law subsequently passed, giving to the mortgagor twelve months to redeem the property from the purchaser at such sale, and prohibiting it from being made for less than two-thirds of its appraised value, so altered the remedy of the creditor, as to impair the obligation of the contract." The Supreme Court of the United States held that a subsequent statute which gave the mortgagor a right to redeem his property from the purchaser within twelve months, and which prohibited the property from being sold for less than two-thirds of its appraised value, impaired the obligation of the original mortgage contract; and yet the Supreme Court of Georgia, with all these decisions before it, decides that a subsequent statute, which takes away from the mortgagor the right to foreclose his mortgage and issue execution and levy on the land mortgaged, does not impair the obligation of the original mortgage contract.

Again: In the case of *Kelly* v. *Stephens*, 39 Ga. 466, the court held, "that where one Harrison had a judgment against Kelly in 1859, and was about to levy on and sell the land now in controtroversy, and Kelly applied to Thomas who loaned him the money to relieve the land from sale, and took his note secured by mort-

gage in May 1859, upon which a mortgage fi. fa. issued in 1867, the lien of which it is now sought to enforce by the sale of the land, and Kelly claims a homestead in the land as against the mortgage lien, Kelly is not entitled to the homestead in the land, because as to past contracts the plaintiff's mortgage created an encumbrance upon the land which the defendant is bound to discharge, before he is entitled to a homestead under the Act of 1868."

Judge WARNER in his dissenting opinion in *Chambliss* v. *Phelps*, supra, says: "Perhaps it is owing to the want of proper discrimination, but I have not been able to discover any difference in principle between the encumbrance created upon the homestead of Chambliss by Phelps's mortgage, and that created on the homestead of Kelly by Thomas's mortgage. Both were executed prior to the passage of the homestead Act, and both were encumbrances upon the land claimed as a homestead."

The distinction made in these two cases is as absurd as it is unjust and illegal. If A lends B money and takes a mortgage on B's land, before the Homestead Act of 1868, B can apply under said Act for a homestead and it is not subject to A's mortgage. But if A lends money to B and takes a mortgage on B's land, before the Homestead Act of 1868, and B should borrow from C money to pay off A's mortgage, and should then execute to C a mortgage on said land, C's mortgage would have to be first satisfied before B could obtain a homestead out of said land. In the first instance the mortgage is not an encumbrance upon the land. A has no vested right—no lien, because the judges have decided the Homestead and Exemption Laws "to be retroactive, and constitutional as the remedy only is altered." Whereas in the second case C has a lien, a vested right—because his mortgage comes within the exception as provided for under the Act of 1868—viz.: "removing of encumbrances."

In North Carolina the Supreme Court has rendered several decisions upon the recent Homestead and Exemption Laws in force in that state, all of which are referred to in this article: Ante, page 12. They have to a great extent recognised the binding authority of the decision of the Supreme Court of the United States.

In the case of *McKeithan* v. *Terry*, 64 N. C. p. 25, afterwards affirmed in the case of *Sluder* v. *Rogers*, Ibid. p. 289, the Court

says: "Specific liens created before the adoption of the Constitution are not divested by the provisions for a homestead in the Constitution." This decision receives and recognises the decisions of the Supreme Court of the United States.

But in the case of *Hill* v. *Kessler*, 63 N. C. 427, the court held "that the Homestead and Exemption Laws apply to debts—mere indebtedness—existing before the adoption of the Constitution of 1868; debts not being a lien—a vested right—upon the property of the debtor." Like the Supreme Court of Georgia and of Mississippi, it decides that although the homestead and exemption laws are retroactive, they do not come within the prohibition of the Constitution of the United States, which declares that "no state shall pass any law impairing the obligation of contracts."

From this decision in *Hill* v. *Kessler*, supra, it would seem, in order to sustain the court, that the clause of the Constitution should be read thus: "no state shall pass any law impairing the obligation of those contracts which have become liens—vested rights." But the words of the Constitution are "no state shall pass any law impairing the obligation of contracts." "It would seem difficult to substitute words," says Chief Justice MARSHALL, "which are more intelligible, or less liable to misconstruction; they are express, and incapable of being misunderstood:" *Sturges* v. *Crowninshield*, 4 Wheat. 122. Is not a "debt—mere indebtedness"—a contract? and does not a law which diminishes its value impair it? When the defendant contracted the debt was he not under the obligation to pay it? Did not his "property constitute the means, the whole means of satisfying his debt? If that is taken away, and a mere naked promise is left the creditor, is not the obligation gone?" Is not the binding force of the law which was in existence when the debt was contracted—and which is the obligation of the contract, taken away and totally impaired? Is it not, to say the least, encroaching on its obligation—dispensing with a part of its force? If the Supreme Court in *Sturges* v. *Crowninshield*, 4 Wheat. 122, decided that it is unconstitutional for a state to pass a law, discharging the debtor from all liability for any debt contracted previous to his discharge, on his surrendering his property for the benefit of his creditors, on the ground that it is a law "impairing the obligation of a contract," within the meaning of the Constitution of the United States, would it

not also decide, and has it not already decided, that it is unconstitutional for a state to pass a law declaring that a debtor may have his property exempted for his own benefit, and that it shall not be subject to any previous debts: 4 Wheat. 122; *McCracken* v. *Hayward*, 2 How. 608; *Ogden* v. *Saunders*, 12 Wheat. 213; *Green* v. *Biddle*, 8 Wheat. 84; *Planters' Bank* v. *Sharp et. al.*, 6 How. 327; *Van Hoffman* v. *City of Quincy*, 4 Wall. 548. In the language of Mr. Justice STORY: "It is perfectly clear that any law which enlarges, abridges, or in any manner changes the intention of the parties resulting from the stipulations in the contract necessarily impairs it. The manner or degree in which the change is effected, can in no respect influence the conclusion; for whether the law affect the validity, the construction, the duration, the discharge, or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all supposed cases:" 3d vol. of Commentaries, p. 250; *Golden* v. *Prince*, 3 Wash. C. C. R. 309. "No agreement or contract can create a more binding obligation than those fastened by the law—which the law creates and attaches to contracts. * * * Any subsequent law which denies, obstructs or impairs these rights by superadding conditions," as that property shall not be subject to levy and sale for pre-existing debts—"is a denial of right." "The same power in a state legislature may be carried to any extent if it exist at all;" it may prohibit any of a debtor's property being sold, which is the effect in most cases under the present Homestead and Exemption Laws of the South—"if it can be exercised at all, it must be a matter of uncontrolled discretion in passing laws relating to the remedy, which are regardless of the effect on the rights of plaintiffs:" *McCracken* v. *Hayward*, 2 How. 612. And if the rights of plaintiffs are affected, "it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution:" *Bronson* v. *Kinzie*, 1 How. 316.

The great principle which was intended to be established, by the prohibition of the Constitution, "that no state shall pass any law impairing the obligation of contracts," was the inviolability of contracts. No particular subjects are enumerated to which it should apply. It was intended to forbid all laws impairing the obligation of contracts. In *Ogden* v. *Saunders*, supra, Chief Justice MARSHALL says: "The power of changing the relative

situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such excess by the state legislatures as to break in upon the ordinary intercourse of society, and destroy all confidence between man and man. The mischief had become so great, so alarming, as not only to impair commercial intercourse and threaten the existence of credit, but to sap the morals of the people and destroy the sanctity of private faith. The object of the Convention, therefore, was by this article to impose restraints on state legislation as respected contracts, and to prohibit the use of any means by which their inviolability might be assailed."

But the very object of the Constitution has been evaded, disregarded and violated. The legislatures of most of the Southern States have exercised uncontrollable discretion in passing Homestead and Exemption Laws (which they claim relate only to the remedy), regardless of the effect on the rights of plaintiffs. It is contended that a great necessity existed, growing out of the war, which justified and sanctioned the violation of these great fundamental principles of government and constitutional law. But those who make this assertion should remember that creditors as well as debtors suffered from the calamities of war. The rights of the former are entirely lost sight of in the general demoralization of society resulting from the evils of war, and in most of the Southern States the homesteads and exemptions are so exorbitant and extravagant,[1] that there are but few cases in which any property

[1] Arkansas: Homestead worth $5000—Personalty $2000—Total $7000.

North Carolina:	do.	do.	1000	do.	500	do.	1500.
South Carolina:	do.	do.	1000	do.	500	do.	1500.
Tennessee:	do.	do.	1000	do.	250	do.	1250.
Georgia:*	do.	do.	2000	do.	1000	do.	3000.
Florida:	do. 160 acres of land.			do.	1000.		

Louisiana: Homestead 160 acres of land and personalty both together not to exceed $2000.

Mississippi: Homestead 240 acres of land and personalty both together not to exceed $4000.

* The population of Georgia is about 1,500,000. It is generally estimated that there is a "head of a family" to every 5 persons; therefore there would be about 300,000 "heads of families" in Georgia. The land in Georgia is valued at about $200,000,000. Each family being entitled to real estate worth $2000, it would

of the debtor is left, out of which creditors can procure their money. The result is that in the majority of cases dishonest debtors take advantage of the law, secure their property from levy and sale, which they know is justly subject to their honest debts, and live in comparative affluence, while their creditors suffer for the necessities of life.

There is but one remedy left, and that is, at an early day to test the constitutionality of these laws. This can be done in two ways. Either by a citizen of the state through the state courts; or by a non-resident in the United States courts. In the former, a case can be taken to the Supreme Court of the state and carried from that court by writ of error to the Supreme Court of the United States. In the latter, a case can be brought in the United States Circuit Court. No one for a moment will doubt the result of a case in that court, as it would be compelled to receive the decisions of the Supreme Court of the United States as binding authority. As the law now stands in most of the Southern States, no debts, whether simple debts or judgments, which were in existence before the passage of these laws, can be enforced—the courts of nearly all the states asserting that these laws are constitutional and apply to debts contracted before, as well as those contracted after their adoption. Hence the only relief for honest creditors against dishonest debtors, who in their dishonest purpose and intention wilfully and willingly take advantage of that law which takes the property of one man from him and gives it to another without his consent and denies him all remedy to enforce his right—is to be found before the Supreme Court of the United States, where the expounders of the Federal Constitution must and will prohibit the use of any means by which the inviolability of contracts might be assailed, and thereby support the Constitution and preserve the dignity and integrity, the power and purity of the Judiciary.

J. H. THOMAS.

Savannah, Ga.

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require about $600,000,000 worth of real property to give to each head of a family in Georgia a homestead. This clearly demonstrates that there is three times more land authorized to be exempted under the Homestead Act than is actually in the state of Georgia.